



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____
BILL 70(2017)

A BILL FOR AN ORDINANCE

RELATING TO SMOKING.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to expand and clarify the current ordinances relating to smoking, including but not limited to regulating electronic smoking devices and smoking in motor vehicles.

SECTION 2. Section 41-21.1, Revised Ordinances of Honolulu 1990, is amended by:

- a. Adding new definitions of "electronic smoking device" and "tobacco product" to read as follows:

"Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe, or hookah pen, and any cartridge or other component of the device or related product, whether or not sold separately."

"Tobacco product" means any product made or derived from tobacco, that contains nicotine or other substances, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. "Tobacco product" does not include any product specifically approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product that is being marketed and sold solely for that approved purpose."

- b. Amending the definition of "smoke" or "smoking" to read as follows:

"Smoke" or "smoking" means [and includes] inhaling, [or] exhaling [upon], burning, or carrying any lighted [smoking equipment for tobacco; the personal habit commonly known as smoking.] or heated tobacco product or plant product intended for inhalation in any manner or in any form. "Smoking" includes the use of an electronic smoking device."



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SECTION 3. Section 41-21.2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 41-21.2 Prohibition of smoking in certain places.

Except as otherwise provided herein, smoking ~~[shall be]~~ is prohibited in the following places within the City ~~[and County of Honolulu]~~:

- (a) Elevators in buildings generally open to and used by the public, including elevators in apartment and other multiunit residential buildings.
- (b) Patient rooms, wards, waiting rooms, lobbies and public hallways of public and private health care facilities, including, but not limited to, hospitals, clinics, and physicians' and dentists' offices.
- (c) Any room which is primarily used for exhibiting any motion picture, stage drama, dance, musical performance, or other similar performance during the time that said room, hall, or auditorium is open to the public for such exhibition.
- (d) Museums, libraries, and galleries.
- (e) All areas within city-owned or controlled buildings except any dwelling unit or lodging unit, as those terms are defined by Section 21-10.1, when not used as a child care, adult day care, or health care facility.
- (f) Except as provided in Section 41-21.3 or as limited by this subsection, all areas in business or charitable establishments. For the purposes of this subsection, a "business" means any sole proprietorship, partnership, joint venture, business trust, limited liability company, business corporation, professional corporation, or other business entity formed for profit-making purposes, and "business establishment" includes, but is not limited to, any of the following establishments operated by a business:
 - (1) Any school;
 - (2) Any hotel, except individual hotel rooms;
 - (3) Any financial institution;
 - (4) Any industrial, commercial, or wholesale establishment;



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- (5) Any utility;
 - (6) Any retail establishment where goods or services are sold, leased, or otherwise provided to the public or to another business;
 - (7) Any bar within an enclosed or partially enclosed food court; or
 - (8) Any restaurant; except that smoking ~~[shall]~~ will be permitted in a separate open air area of a restaurant when the business operating the restaurant refrains from designating the area as nonsmoking pursuant to subsection (h).
- (g) Rest rooms. Any rest room open to the public in places specified in this section.
- (h) Notwithstanding Section 41-21.3, any area of any bar, hotel room, restaurant, or governmental property which has been designated by the owner, operator, manager, or other persons having control of such property as a nonsmoking area and marked with a "no smoking" sign or signs.
- (i) All enclosed or partially enclosed areas within multifamily dwellings that are open to the common use of all unit owners or residents, including but not limited to lobbies, hallways, corridors, stairways, waiting areas, and recreation areas within multifamily dwellings. For purposes of this subsection, "enclosed or partially enclosed areas" means areas closed in by a roof or overhang and at least one wall. An area commonly described as a lobby or roofed mall ~~[shall be]~~ is deemed to be enclosed or partially enclosed for purposes of this subsection.
- (j) All enclosed or partially enclosed areas within commercial buildings not subject to the exclusive use and possession of a tenant and open to the common use of the tenants of the building and their employees and customers, including but not limited to common entrance areas, lobbies, malls, food court seating areas, hallways, corridors, escalators, stairways, and waiting or rest areas within commercial buildings. For purposes of this subsection, an enclosed or partially enclosed area is any area for human occupancy that is contained on two or more sides by walls and is covered by a roof, ceiling, or overhang, such that the area of all permanent openings from the space to the open air is less than 50 percent of the combined areas of the walls and ceiling, roof, or overhang. If a wall does not meet the floor or the ceiling, roof, or overhang, the calculation ~~[shall]~~ will be based on the vertical projection of the wall to the plane of the floor or the plane of the ceiling, roof or overhang. Permanent openings ~~[shall]~~ do not include doors or windows which are capable of being closed.



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- (k) In the event that a building is both a multifamily dwelling and a commercial building as defined in this article, all areas except for private residences.
- (l) All ~~[vehicles]~~ motor vehicles:
- (1) That are owned or leased by the city~~[-]; or~~
 - (2) In which a person under eighteen years of age is present.
- (m) All public parks, recreation areas and facilities under the maintenance of the department of parks and recreation or the department of enterprise services, except for the open air areas of a municipal golf course and such areas within each of the following sites as the department of parks and recreation or the department of enterprise services may designate by appropriate signs as areas within which smoking is permissible:
- (1) Honolulu Zoo;
 - (2) Hanauma Bay Nature Preserve;
 - (3) Koko Crater Botanical Garden; and
 - (4) Waikiki Shell
- (n) Any bus stop. The smoking prohibition applies to the area of the bus stop ~~[for which the smoking prohibition applies shall extend]~~ that extends out from the bus stop sign or the footprint of the shelter in every direction by 20 feet. The footprint of the shelter is defined by vertical planes extending down from the outermost edges of the shelter overhang or roof. The prohibition contemplated in this subsection ~~[(n) shall]~~ only ~~[apply]~~ applies to public places."



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SECTION 4. Section 41-21.4, Revised Ordinances of Honolulu 1990 ("Signs"), is amended by amending subsection (a) to read as follows:

- "(a) Clearly legible signs [~~which~~] that include the words "smoking prohibited by law" with letters of not less than one inch in height [~~shall~~] must be conspicuously posted in all places where smoking is prohibited by this article [~~or~~] by the owner, operator, manager, or other person having control of such place. This subsection does not apply to privately owned motor vehicles, unless the vehicles are used in public transportation under the authority of the State or the city."

SECTION 5. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.



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SECTION 6. This ordinance takes effect upon approval.

INTRODUCED BY:



DATE OF INTRODUCTION:

JUL 26 2017

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu